

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WILLIAM BILLY GENE CARTER,)
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Plaintiff,)
)
)
v.) No. 4:11CV769 NAB
)
)
FELIX VINCENZ,)
)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of William Carter for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or fact.”

Neitzke v. Williams, 490 U.S. 319, 328 (1989); Denton v. Hernandez, 504 U.S. 25, 31 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. Spencer v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff'd, 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

The Complaint

Plaintiff, a civilly committed resident at Missouri's Sexual Offender Treatment Services, brings this action under 42 U.S.C. § 1983 against Felix Vincenz, formerly the CEO of the Fulton State Hospital. Plaintiff alleges that prior to August 2002 he was a committed patient at the Fulton State Hospital. Plaintiff claims that he was able to work while he was a patient there, earning a wage. Plaintiff says that he filed a petition for unconditional or conditional release, which prompted defendant to retaliate against him by having him transferred to the Missouri Sexual Offender Treatment Center at Farmington Correctional Center in August 2002. Plaintiff alleges that ever since the transfer he has not been allowed to work for a wage. Plaintiff believes this violated his constitutional rights, and he seeks monetary relief.

Discussion

“Although the statute of limitations is an affirmative defense, a district court may properly dismiss an in forma pauperis complaint under 28 U.S.C. § 1915[] when it is apparent the statute of limitations has run.” Myers v. Vogal, 960 F.2d 750, 751 (8th Cir. 1992). Section 1983 claims are analogous to personal injury claims and are subject to Missouri’s five-year statute of limitations. Sulik v. Taney County, Mo., 393 F.3d 765, 766-67 (8th Cir. 2005); Mo. Rev. Stat. § 516.120(4). It is clear that the statute of limitations has run on plaintiff’s claims. As a result, the Court will dismiss this action as untimely.

Moreover, even if the statute of limitations had not run on plaintiff’s claims, the Court would still dismiss this action because plaintiff’s allegations do not rise to the level of a constitutional violation.

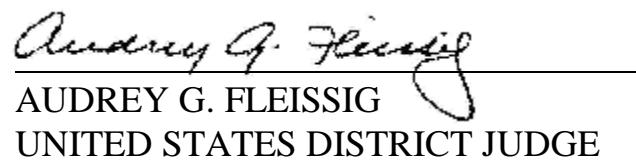
Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 6th day of May, 2011.


Audrey G. Fleissig
AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE